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JOHN F. DAVIS, CL

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1965.

No. 692

THE PURE OIL COMPANY,

Petitioner,

versus

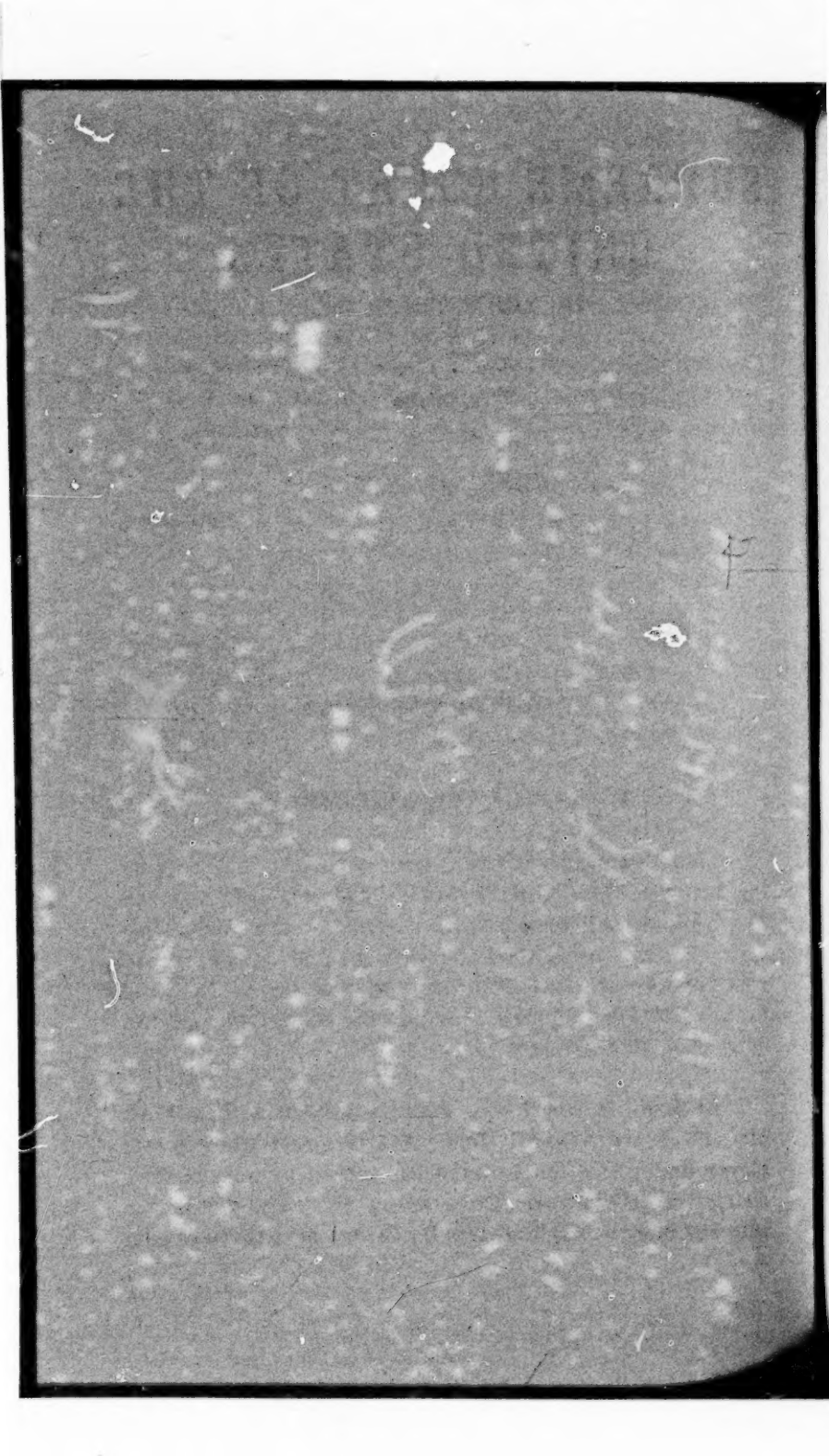
PASCUAL SUAREZ,

Respondent.

RESPONDENT'S BRIEF

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RESPONDENT'S ARGUMENT

This Court granted certiorari with a conflict existing between the Third Circuit on the one side and the First, Fourth, Fifth and Ninth Circuits on the other, with a similar division among the various District Courts, in construction of the application of the General Venue Statute, 28 U.S.C. 1391(c), to the venue provision of the Jones Act, 46 U.S.C. 688.

At issue is whether a merchant seaman may avail himself of the General Venue Statute, and sue his employer under the Jones Act, with a trial by jury in any district of the United States where the employer transacts business; **or,** should the Jones Act be narrowly con-

strued so as to exclude application of the General Venue Statute requiring the seaman to either, (1) forego a jury trial by suing on the admiralty side of the Federal Court; or, (2) have his jury trial in a distant district of the employer's choice; or, (3) have a jury trial in a state court, which would be hampered by complicated discovery procedures, and non-availability of 28 U.S.C. 1916.

The narrow, harsh construction has been followed by the Third Circuit. **Leith v. Oil Transport Co.**, 321 F.2d 591 (1963).

Criticized by the Third Circuit in **Leith** for their more practical approach are, **Hutchison v. Pacific - Atlantic S.S. Co.**, 217 F.2d 384 (9th Cir. 1954); **Connolly v. Farrell Lines**, 268 F.2d 653 (1st Cir.), cert. denied, 361 U.S. 902 (1959). The Fifth Circuit herein sharply disagreed with the Third Circuit's **Leith** holding.

Since the Court granted certiorari on January 17, 1966, there has been reported from the Fourth Circuit an opinion reaching the same result as reached herein by the Court below. **Fanning v. United Fruit Co.**, 34 U.S. Law Week, 2384 (4th Cir., Jan. 4, 1966).

After stating the shipowner's reliance on **Fourco Glass Co. v. Transmirra Products Corp.**, 353 U.S. 222 (1958), opposing application of the General Venue Statute to the Jones Act, the Fourth Circuit, through Senior Circuit Judge Sobeloff, held:

> "Since the 1957 Fourco decision two courts of appeals have passed on the question presented here. The Third Circuit, in **Leith v. Oil Trans-**

port Co., 321 F.2d 591 (1963) held that Fourco compels a narrow reading of the Jones Act venue provision, unaffected by the liberal venue provisions of section 1391(c). The Fifth Circuit, however, in **Pure Oil Co. v. Suarez**, 346 F.2d 890 (1965), refused to follow the Leith holding, applied the definition of residence contained in section 1391(c), and treated Fourco as limited to a construction of the venue provision of the patent infringement statute. ***

"After full consideration of the competing arguments we favor the Fifth Circuit's interpretation. ***

"The Fourco decision does not hold that section 1391(c) must yield automatically in every instance. Rather, the Supreme Court, examining the purposes of the special venue provision contained in the patent infringement statute, determined that applying the general venue statute would not be consistent with the congressional purpose in enacting the special venue provision. ***

"Those decisions of the lower federal courts after 1957, which applied the Fourco rationale to Jones Act venue, misconceived, we think, the thrust of that decision. Applying the Fourco doctrine in Jones Act cases results in an unwarranted withdrawal of a convenient forum previously (from 1948 to 1957) available to seamen for the prosecution of their Jones Act claims. We find nothing to compel an extension of Fourco to situa-

tions not in contemplation when that case was decided.

"The Jones Act with its venue provision has a history distinctly different from that of the patent infringement statute. Consistently, the Supreme Court has reiterated that the purpose of the Jones Act was to enlarge admiralty's protection of seamen and that its terms should be interpreted to benefit them. See Garrett v. Moore-McCormack Co., 317 U.S. 239 (1942); Socony-Vacuum Oil Co. v. Smith, 305 U.S. 424 (1939). It seems wholly opposed to the purposes of the Jones Act to construe its venue provision more narrowly than the general venue statute, and thus to afford the defendant-employer in a Jones Act suit a means of escape that would not be available to it in a diversity suit. To limit an injured seaman's access to the federal courts by a narrowing construction of the Jones Act venue provision would in this and many other cases work an emasculation of the statute, depriving its intended beneficiaries of the federal remedy made available to them by Congress."

The venue provisions of the Jones Act have never been given narrow, strict, literal interpretation from the first consideration of the Act by this Court:

Panama R.R. v. Johnson, 264 U.S. 375 (1924), where this Court held the jurisdictional sentence referred only to venue.

Bainbridge v. Merchants & Miners Transport Co.,

287 U.S. 278 (1932), holding that the venue provisions of the Act do not apply to suits in state courts brought under the concurrent jurisdictional provision of 45 U.S.C. 56, 28 U.S.C. 1445.

Arthur v. Compagnie Generale Transatlantique, 74 F.2d 662 (5th Cir. 1934), in which it was held that the venue privileges of Act could not be asserted by an alien employer.

Branic v. Wheeling Steel Corp., 152 F.2d 887 (3rd Cir. 1945), holding the venue provisions do not apply to actions commenced on the admiralty side of the Federal Courts.

The seamen have as much right to sue their employers in the most convenient forum available as, for instance, Congress gave to victims of negligent trucking companies. The General Venue Statute was enacted as remedial legislation for the convenience of plaintiffs. It should be liberally construed to accomplish the Congressional intent. Exclusion of its application to the Jones Act would merely open a broad highway for all corporate defendants to travel on in marshalling forces to oppose its application to general litigation and nullify the intent of Congress in its 1948 revision of the Judicial Code. This would seem to be the course urged upon this Court by the Petitioner. The courts would soon be swamped with motions to transfer cases to distant courts because corporate defendant would readily avail themselves of the argument forwarded by the Petitioner herein that the General Venue Statute does not apply to any litigation not affirmatively provided for by Congress. This construction of remedial legislation is unwarranted.

CONCLUSION

It is respectfully submitted that upon Argument, the opinion of the Court of Appeals for the Fifth Circuit be affirmed.

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REPLY BRIEF FOR PETITIONER

Respondent's brief relies on the Fourth Circuit's as-yet unreported opinion in *Fanning vs United Fruit Co.* (January 4, 1966),* which follows the holding of the Fifth Circuit in the case at bar, and rejects the contrary holding of the Third Circuit in *Leith vs Oil Transport Co.*, 321 F2d 591.

Like the opinion below of the Fifth Circuit, that of the Fourth Circuit in *Fanning* is based on the asserted inequity of a policy which would limit Jones-Act venue to the state of the defendant's incorporation or principal office.

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* Reported unofficially, 34 US Law Week 2384 (January 25, 1966).

The *ratio decidendi* of the Fifth Circuit in the instant case was that "there is a shocking inconsistency in a rule of law which permits a corporation to maintain a regular, established place of business in the district . . . but allows the corporation to insist on a trial of the factual issues in the district in which it is incorporated or in which its principal office is located".

The Fourth Circuit's opinion holds that "there would be obvious unfairness in requiring the plaintiff to sue in the district of the defendant's incorporation or of its principal office".

Both courts apparently overlooked the fact that the "shocking unfairness" to which they refer was the express intent of Congress, followed by all courts without question, for nearly thirty years from enactment of the Jones Act in 1920 until general revision of the Judicial Code in 1948.

Both the Fourth and Fifth Circuits apparently also overlooked this Court's holding in *Fourco* as to this question of policy, that the revisers of the Judicial Code "are uniformly clear that no changes of law or policy are to be presumed from changes of language in the revision unless an intent to make such changes is clearly expressed", quoting Professor Moore of Yale, "a special consultant on this revision", who "stated that: 'Venue provisions have not been altered by the revision.'"

It is again respectfully submitted that modification of a statutory provision on policy grounds lies within the

prerogative of the legislative, not the judicial, branch, and that the judgment below is accordingly erroneous and should be reversed.

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March, 1966